

SEATTLE OFFICE FOR CIVIL RIGHTS

Seattle Office for Civil Rights Rules

Chapter 40

Practice and Procedure in Discrimination Cases

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SEATTLE OFFICE FOR CIVIL RIGHTS

Seattle Office for Civil Rights Rules

Chapter 40

Practice and Procedure in Discrimination Cases

General Provisions

SHRR 40-050. APPLICABILITY OF RULES

- (1) These rules (Chapter 40) govern the procedures of the Seattle Office for Civil Rights in administering the Fair Employment Practices Ordinance No. 109116, as amended, Seattle Municipal Code (S.M.C.) Ch. 14.04, the Open Housing Ordinance No. 104839, as amended, S.M.C. Ch. 14.08 and applicable provisions of Ordinance No. 97971, as amended, S.M.C. Ch. 3.22, which established the Seattle Office for Civil Rights. The rules govern the procedure from the charging party's initial inquiry until the charge is withdrawn or the Director or his or her designee dismisses the charge, administratively closes the case, refers the matter to the City Attorney for prosecution, or, in City Employment cases, obtains confirmation the respondent has complied with the Director's order.
- (2) These rules and any amendment to these rules shall apply to charges pending before the Department when the rules or the amendment are or is adopted except that anything already done need not be redone to comply with the rules or with the amendment.

SHRR 40-010. RELATION TO ORDINANCES

These rules supplement the provisions of the Fair Employment Practices Ordinance, as amended, of the Open Housing Ordinance, as amended and of Ordinance No. 97971, as amended.

SHRR 40-015. DEFINITIONS

- (1) Definitions of most terms used in these rules are found in the Fair Employment Practices Ordinance and the Open Housing Ordinance. See S.M.C. 14.04.030 and 14.08.020. For the convenience of the users of these rules, the definitions contained in S.M.C. 14.04.030 and 14.08.020 are restated in this subsection. If there is any discrepancy in the definitions stated in this subsection and those contained in S.M.C. 14.04.030 and 14.08.020, the latter definitions shall be followed.
 - a. In matters arising under the Fair Employment Practices Ordinance, unless the context otherwise requires:

- (i) "Charging party" means the person aggrieved by an alleged unfair employment practice or the person making a charge on another person's behalf, or the Director when the Director files a charge.
- (ii) "City department" means any agency, office, board or commission of the city, or any department employee acting on its behalf, but shall not mean a public corporation chartered under Ordinance 103387 (S.M.C. Ch. 3.110), or its successor ordinances, or any contractor, consultant, concessionaire or lessee.
- (iii) "Commission" means the Seattle Human Rights Commission.
- (iv) "Department" means the Seattle Office for Civil Rights of the City.
- (v) "Director" means the Director of the Seattle Office for Civil Rights or her or his designee.
- (vi) "Discrimination," "discriminate," and/or "discriminatory act" means any act, by itself or as part of a practice, which is intended to or results in different treatment or differentiates between or among individuals or groups of individuals by reason of race, color, age, sex, marital status, sexual orientation, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap.
- (vii) "Employee" means any person employed by an employer.
- (viii) "Employer" means any person who has four or more employees, or the employer's designee or any person acting in the interest of such employer.
- (ix) "Employment agency" means any person undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer, or place individuals with an employer or in employment.
- (x) "Labor organization" means any organization or employee group or association in which employees participate and which exists for the purpose of (1) collective bargaining for or on behalf of employees, (2) dealing with employers concerning grievances, labor disputes, terms or conditions of employment, or (3) other mutual aid or protection of such employees in relation to their employment.
- (xi) "Marital status" means the presence or absence of a marital relationship and includes the status of married, separated, divorced, engaged, widowed, single or cohabitating.
- (xii) "Party" includes the person charging or making a complaint or upon whose behalf a complaint is made alleging an unfair employment practice, the person alleged or found to have committed an unfair employment practice and the Seattle Office for Civil Rights.

- (xiii) "Person" includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporation, cooperatives, legal representatives, trustees, trustees in bankruptcy, and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons, and further includes any department, office, agency or instrumentality of the city.
 - (xiv) "Political ideology" means any idea or belief, or coordinated body of ideas or beliefs, relating to the purpose, conduct, organization, function or basis of government and related institutions and activities, whether or not characteristic of any political party or group. This term includes membership in a political party or group and includes conduct, reasonably related to political ideology, which does not interfere with job performance.
 - (xv) "Respondent" means any person who is alleged or found to have committed an unfair employment practice prohibited by this chapter.
 - (xvi) "Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality, homosexuality, transsexuality or transvestism and includes a person's attitudes, preferences, beliefs and practices pertaining thereto.
- b. In matters arising under the Open Housing Ordinance, unless the context otherwise requires:
- (i) "Charging party" means the person aggrieved by an unfair practice, or the person making a charge on another person's behalf, or the Director when the Director files a charge.
 - (ii) "City" means The City of Seattle.
 - (iii) "City department" means any agency, office, board or commission of the City, or any department employee acting on its behalf, but shall not mean a public corporation chartered under Ordinance 103387, or its successor ordinances, or any contractor, consultant, or concessionaire or lessee.
 - (iv) "Commission" means the Seattle Human Rights Commission.
 - (v) "Department" means the Seattle Office for Civil Rights.
 - (vi) "Director" means the Director of the Seattle Office for Civil Rights or her or his designee.
 - (vii) "Discriminate" means any conduct, whether by single act or as part of a practice, the effect of which is to adversely affect or differentiate between or among individuals or groups of individuals, because of race, color, creed, religion, ancestry, national origin, age, sex, marital status,

parental status, sexual orientation, political ideology, possession or use of a Section 8 rent certificate, the presence of any sensory, mental or physical handicap or the use of a trained guide or service dog by a handicapped person.

- (viii) "Dwelling" means any building, structure, or portion thereof which is occupied as, or is designed or intended for occupancy as, a residence by one or more individuals or families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.
- (ix) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, color, sex, marital status, parental status, sexual orientation, political ideology, creed, religion, national origin, ancestry, persons holding a Section 8 rent certificate, persons with any sensory, mental or physical handicap, or handicapped persons using trained guide or service dogs, to be treated as not welcome, accepted, desired or solicited.
- (x) "Holder" means a person possessing a Section 8 rent certificate.
- (xi) "Housing accommodations" includes any dwelling, rooming unit, rooming house, lot or parcel of land in the City which is used, intended to be used, or arranged or designed to be used as, or improved with, a residential structure for one (1) or more human beings.
- (xii) "Lender" includes any bank, insurance company, savings or building and loan association, credit union, trust company, mortgage company, or other person or agent thereof, engaged wholly or partly in the business of lending money for the financing or acquisition, construction, repair or maintenance of real property.
- (xiii) "Marital status" means the presence or absence of a marital relationship and includes the status of married, separated, divorced, engaged, widowed, single or cohabitating.
- (xiv) "Occupant" includes any person who has established residence or has the right to occupancy of real property.
- (xv) "Owner" includes persons who own, lease, sublease, rent, operate, manage, have charge of, control or have the right of ownership, possession, management, charge, or control of real property on their own behalf or on behalf of another.

- (xvi) "Parental status" means being a parent, step-parent, adoptive parent, guardian, foster parent or custodian of a minor child or children under the age of 18 years, or the designee of a parent or other person having legal custody of a child or children under the age of 18 years, with the written permission of such parent or other person, which child or children shall reside permanently or temporarily or shall seek full enjoyment of any place of public accommodation with such parent or other person. In addition, parental status shall refer to any person who is pregnant or who is in the process of acquiring legal custody of any person who has not yet attained the age of 18 years.
- (xvii) "Party" includes the person charging or making a charge or complaint or upon whose behalf a charge or complaint is made alleging an unfair practice, the person alleged or found to have committed an unfair practice and the Seattle Office for Civil Rights.
- (xviii) "Person" includes one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy and receivers. It includes any owner, lessee, proprietor, manager, agent or employee, whether one (1) or more natural persons, and further includes any political or civil subdivisions or agency or instrumentality of the City.
- (xix) "Place of public accommodation" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates or assembles for amusement, recreation or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two (2) or more tenants, or by the owner and one (1) or more tenants, or any public library or private educational institution, or private schools of special instruction, or nursery schools, or day care centers or children's camps.

- (xx) "Political ideology" means any idea or belief, or coordinated body of ideas or beliefs, relating to the purpose, conduct, organization, function or basis of government and related institutions and activities, whether or not characteristic of any political party or group. This term includes membership in a political party or group and includes conduct, reasonably related to political ideology, which does not interfere with the property rights of the landowner as it applies to housing, or which does not cause substantial and material disruption of the property rights of the provider of a place of public accommodation.
- (xxi) "Prospective borrower" includes any person who seeks to borrow money to finance the acquisition, construction, repair, or maintenance of real property.
- (xxii) "Prospective occupant" includes any person who seeks to purchase, lease, sublease or rent real property.
- (xxiii) "Real estate agent, salesperson or employee" includes any person employed by, associated with or acting for a real estate broker to perform or assist in the performance of any or all of the functions of a real estate broker.
- (xxiv) "Real estate broker" includes any person who for a fee, commission, or other valuable consideration, lists for sale, sells, purchases, exchanges, leases or subleases, rents, or negotiates or offers or attempts to negotiate the sale, purchase, exchange, lease, sublease or rental of real property of another, or holds themselves out as engaged in the business of selling, purchasing, exchanging, listing, leasing, subleasing, or renting real property of another, or collects the rental for use of real property of another.
- (xxv) "Real estate-related transaction" means any of the following:
 - (a) The making or purchasing of loans or providing other financial assistance
 - i. for purchasing, constructing, improving, repairing, or maintaining real property; or
 - ii. secured by real property; or
 - (b) the selling, brokering, or appraising of real property.
- (xxvi) "Real property" includes housing accommodations, buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein
- (xxvii) "Respondent" means any person who is alleged to have committed an unfair practice prohibited by this chapter.

- (xxviii) "Rooming unit" includes one (1) or more rooms within a dwelling or rooming house containing space for living and sleeping.
 - (xxix) "Section 8 rent certificate" means a document issued by a government agency declaring the holder thereof eligible to participate in the Section 8 program and stating the terms and conditions of such participation.
 - (xxx) "Section 8" means a federal, state or local government program in which a tenant's rent is paid partially by the government program (through direct contract between the government program and the owner or lessor of the real property), and partially by the tenant.
 - (xxxi) "Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality, homosexuality, transsexuals, or transvestism and includes a person's attitudes, preferences, beliefs and practices pertaining thereto.
- (2) In addition to the other definitions stated in this rule (40-015), in matters arising under either the Fair Employment Practices Ordinance or the Open Housing Ordinance:
- a. A "continuing unfair practice" means an unfair practice which adversely affects the charging party (or the person on whose behalf a Director's charge is filed) and which is committed repeatedly over a period of time. The Director or his or her designee shall decide if a charge alleges a continuing unfair practice.
 - b. "Case" means the proceedings before the Department regarding a charge.
 - c. "Friends and associates" as used in S.M.C. 14.08.090 includes other persons residing in or intending to reside in the dwelling.
 - d. The prohibitions against publishing, printing, issuing, displaying, or circulating any statement, communication, advertisement, publication, or notice indicating any preference based on membership in a protected category include oral communications.
 - e. It is permissible under S.M.C. Ch. 14.08 for housing accommodations to be limited to older persons, in compliance with 42 USC §3607 (b), or to the handicapped. However, it is not permissible to discriminate against any person in any real estate transaction involving such housing accommodations because of their membership in any other protected category covered by S.M.C. Ch. 14.08. Further, it is not permissible for any housing accommodation limited to older persons to discriminate in any real estate transaction against a handicapped person; nor is it permissible for any housing accommodation limited to the handicapped to discriminate in any real estate transaction against handicapped older persons.

SHRR 40-020. PRACTICE WHERE RULES DO NOT GOVERN

If a matter arises in administering the Fair Employment Practices Ordinance or the Open Housing Ordinance that is not specifically governed by these rules, the Director shall, in the exercise of his or her discretion, specify the procedure to be followed.

SHRR 40-025. CONSTRUCTION OF RULES

These rules shall be liberally construed to permit the Department to accomplish its administrative duties and to secure the just and speedy determination of the merits of all charges and complaints received by the Department.

SHRR 40-030. EXCEPTIONS TO THESE RULES

On his or her own motion or at the request of a party, the Director may grant an exception to a rule in a specific instance where special circumstances are such that literal application of the rule will not effect the purposes of the Fair Employment Practices Ordinance or Open Housing Ordinance. If an exception to a rule is granted, the Director or his or her designee shall notify the parties within five days that the exception has been granted. The notice shall state the procedure which shall be followed in lieu of the excepted rule.

SHRR 40-035. SEVERABILITY

If any of these rules or any part of a rule is determined to be invalid, the remaining rules or part of the rule affected shall continue in full force and effect.

SHRR 40-040. COMPUTATION OF TIME

- (1) In computing any period of time prescribed or allowed by these rules, by order of the Director, by the Fair Employment Practices Ordinance or by the Open Housing Ordinance, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday officially recognized by the City of Seattle, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday officially recognized by the City.
- (2) The six month period allowed for filing charges (see S.M.C. 14.040.090 and 14.08.110) shall be computed as one hundred and eighty (180) days.

SHRR 40-045. SERVICE AND FILING OF PAPERS

- (1) Charges. A charge is filed when it is received in the office of the Department. See S.M.C. 14.04.090 and 14.08.110. A notice of a charge shall be served as specified by the Fair Employment Practices Ordinance and by the Open Housing and Public Accommodations Ordinance. See S.M.C. sections 14.04.110 A and 14.08.130 A.
- (2) Other Documents.
 - a. Who Serves. The Director shall cause to be served all papers issued by the Department. Parties shall be responsible for serving their own papers.
 - b. How Served. Service of papers other than charges may be made personally, by first-class mail, by certified or registered mail with return receipt requested, by telegraph, or by leaving a copy with a person of suitable age and discretion at the office, principal place of business, or residence of the person to be served. If service is made by mail, the papers shall be deposited in the United States mail addressed to the person upon whom they are served with postage prepaid. Service by mail shall be deemed complete on the third day following the day the papers are placed in the mail unless the third day is a Saturday, a Sunday or a legal holiday officially recognized by either the City of Seattle or the U.S. Postal Service in which event service shall be deemed complete on the first day other than a Saturday, a Sunday or a legal holiday following the third day.
 - c. Proof of Service. Proof of service may be made by written acknowledgment of service, by the affidavit of the person who personally served the papers or who mailed the papers, or by a certificate of mailing signed by an attorney.
 - d. Upon Whom Served. All papers served by the Department or by any party shall be served upon all attorneys for the parties, upon all parties not represented by attorneys and upon the agent designated by a party or by law of a party not represented by an attorney. An attorney entering his or her appearance or withdrawing as representative for any person shall notify the Department and all parties or their attorneys of his or her appearance or withdrawal.
 - e. Filing of Papers. All papers, except those containing factual information pertinent to an investigation, filed with or served upon the Department shall be served upon all parties to the proceedings or upon their attorneys. Papers, except those containing factual information pertinent to an investigation, filed with or served upon the Department shall be deemed filed or served when they are received at the office of the Department or at another place previously specified by the Director or his or her designee, provided that such papers shall not be deemed filed or served until proof of service of the papers upon all parties to the proceedings is received by the Department.

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- (3) All Notices to be in Writing. All notices issued by the Department in the implementation of S.M.C. Chs. 14.04 and 14.08 shall be in writing and shall be served upon the parties to a charge in accordance with subsection (2) of this section.

SHRR 40-050. WHO MAY REPRESENT PARTIES

In the procedures prescribed by this Chapter (SHRR ch. 40), a party may be represented by an attorney at law entitled to practice before the Supreme Court of the State of Washington, or by a legal intern licensed to practice law in the State of Washington, under Admission to Practice Rule 9. If a city department is to be represented by an attorney, such representation must conform to the requirements of the City Charter. An attorney's or legal intern's role in the investigation and conciliation efforts of the Department is limited to advising his or her client and to making recommendations to the Department.

SHRR 40-055. DEPARTMENT'S FUNCTION

- (1) The purpose of the Fair Employment Practices Ordinance is to assure equal employment opportunity to all persons. S.M.C. 14.04.020 A & C. The purposes of the Open Housing and Public Accommodations Ordinance are to promote the availability and accessibility of housing and real property to all persons and to prohibit discriminatory practices in real property transactions and in places of public accommodation. S.M.C. 14.08.010. The Department administers the Fair Employment Practices Ordinance and the Open Housing and Public Accommodations Ordinance to accomplish the purposes of these ordinances.
- (2) The Department receives and investigates charges to determine whether reasonable cause exists to believe an unfair practice has occurred or is occurring. If reasonable cause is found to exist, the Department will attempt to obtain the remedy which will eliminate the unfair practice and which will prevent its recurrence. Such remedy may be compensatory, corrective or proscriptive. See SHRR 40-320 — 40-335. The remedy appropriate to eliminate and to prevent the recurrence of an unfair practice so as to carry out the purpose of the Fair Employment Practices Ordinance and of the Open Housing and Public Accommodations Ordinance is a matter within the discretion of the Director or his or her designee until or unless:
 - a. the case is appealed to the Commission pursuant to SHRR 46-040 or 46-050 (see SHRR 40-385(1));
 - b. in employment cases in which a city department is a respondent, the matter is certified to a Hearing Examiner pursuant to S.M.C. 14.04.150 E or is appealed to the Commission pursuant to S.M.C. 14.04.160; or

- c. the case is referred to the City Attorney pursuant to S.M.C. 14.04.140B and 14.04.170 or 14.08.160C and 14.08.170; or
- d. in cases involving an unfair real estate practice, the charging party or respondent elects a civil action under S.M.C. 14.08.165.

SHRR 40- 060. COOPERATION AGREEMENTS WITH OTHER AGENCIES

- (1) If a charge alleges facts which would also provide the basis for a charge with the Equal Employment Opportunity Commission (EEOC) or the Department of Housing and Urban Development (HUD), the Department may accept it on behalf of EEOC or HUD and forward it to the appropriate agency. Under work-sharing agreements between the Department and each federal agency, the Department, in most instances will process the charge for the federal agency.
- (2) Pursuant to a memorandum of understanding between the Department and the Washington State Human Rights Commission (WSHRC), when a charge filed with the Department alleges substantially the same facts as a complaint filed with the WSHRC, the Department may process the charge and the WSHRC may adopt the Department's findings, determination and Order. The Department may, on the other hand, transfer the case to the WSHRC for processing unless the charging party requests otherwise.
- (3) When a complaint filed with the Seattle Civil Service Commission alleges facts which if true would establish a violation of the Fair Employment Practices Ordinance, the Department will, pursuant to Civil Service Rule 2.15, investigate the allegations of the complaint and advise the Civil Service Commission whether a violation of the Fair Employment Practices Ordinance has occurred.

SHRR 40-065. ACCESS TO RECORDS

- (1) It is essential to the Department's effective enforcement of the Fair Employment Practices Ordinance and the Open Housing and Public Accommodations Ordinance that the Department not be required to disclose specific intelligence information and specific investigative records compiled during the investigations until the investigation and conciliation efforts regarding the matter are complete. Pursuant to R.C.W. 42.17.310(1)(d), specific information and records compiled in the investigations by the Department, by the Director, or by his or her designee, which are otherwise not exempt from disclosure will not be available for public inspection or copying until:
 - a. in cases in which a city department is the respondent, the Director's final order has been issued;
 - b. in all other cases, a notice of unsuccessful conciliation has been issued; or

- c. in any case, a finding of no reasonable cause has been issued or the matter or charge has been withdrawn, dismissed or administratively closed.
- (2) Except as provided in subsection (3) below, during investigation of and conciliation efforts regarding a charge, the Department, the Director or his or her designee may disclose to a party information and records supplied to the Department, to the Director, or to his or her designee by another party to that case if, in the judgment of the Director or his or her designee, such disclosure would promote the effective enforcement of the Fair Employment Practices Ordinance or the Open Housing and Public Accommodations Ordinance.
- (3) The following information and records shall not at any time be disclosed by the Department, by the Director or by his or her designee, except to the Commission, to the EEOC, to HUD, to the WSHRC or to the Seattle Civil Service Commission when the recipient agency is prohibited from disclosing such information and records:
 - a. information and records compiled in an investigation the nondisclosure of which is essential for the protection of any person's right to privacy; provided that if all information identifying individuals can be deleted from a specific record, the record, with such deletions made, may be disclosed. See RCW 42.17.310(1)(d) and 42.17.310(2);
 - b. preliminary drafts, notes, recommendations and intra-Department memorandums in which opinions are expressed or policies formulated or recommended except that a specific record may be disclosed when publicly cited by the Department, the Director or the Director's designee in connection with an action by the Department, by the Director or by the Director's designee. See RCW 42.17.310(1)(l);
 - c. any other information or record exempt from disclosure under RCW Chapter 42.17.
- (4) The Department, the Director or the Director's designee will disclose from open files statistical information not descriptive of any readily identifiable person or persons. See RCW 42.17.310(2)

SHRR 40-070. ETHICS AND CONFLICTS OF INTEREST

- (1) In addition to the conduct prohibited by the City's Code of Ethics, S.M.C. Chapter 4.16, no Department employee will investigate or attempt to conciliate a charge against a person with whom the employee, a member of the employee's immediate family or a person with whom the employee has a substantial financial relationship or close personal relationship:
 - a. has a current application for employment; or
 - b. is employed; or

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- c. is a tenant.
- (2) The Department shall defer to the EEOC or WSHRC charges filed by Department employees except in those cases in which neither the EEOC nor WSHRC has jurisdiction over the matters alleged in the charge. When neither the EEOC nor WSHRC has jurisdiction over a Department employee's charge, the Director may designate a person who in the Director's judgement is qualified to investigate and to recommend a determination of the Department employee's charge.

SHRR 40-075 — 40-100 [Reserved]

Charges

SHRR 40-105. WHO MAY FILE

The persons who may file charges are described in the Fair Employment Practices Ordinance and the Open Housing and Public Accommodations Ordinance. See S.M.C. 14.04.080 and 14.08.100.

SHRR 40-110. WHERE TO FILE

Charges shall be filed at the office of the Seattle Office for Civil Rights, 700 Third Avenue, Suite 250, Seattle, Washington 98104.

SHRR 40-115. CONTENT AND BASIS OF CHARGES

- (1) General. The Fair Employment Practices Ordinance and the Open Housing Ordinance state what must be included in charges. See S.M.C. 14.04.080 and 14.08.100.
- (2) Department Assistance. The Department will provide assistance to the charging party or his or her representative in drafting a charge if the charging party or his or her representative so requests and if the charging party or his or her representative provides the requisite information to the Department. Notary services are available at the Department's offices at no charge to a person who wishes to sign a charge.
- (3) Director's Charge. The Director may file a charge when he or she obtains information from any source which, in the Director's opinion, establishes that there is reason to believe any person has engaged in or is engaging in an unfair employment practice or in an unfair housing practice. See S.M.C. 14.04.080 D and 14.08.100 C. A Director's charge shall be processed through investigation, determination, conciliation and order as is appropriate under the Fair

Employment Practices or under Open Housing Ordinance and under these rules.

- (4) Defects. A charge shall not be rejected as insufficient because of failure to include all required information so long as, in the judgment of the Director, it substantially satisfies the requirements necessary for processing. A charge lacking in any technical requirement shall not be considered defective, provided the requirement is later met.

SHRR 40-120. TIME FOR FILING

A charge must be filed within one hundred and eighty (180) days of the occurrence of the alleged unfair practice. See S.M.C. 14.04.090, 14.08.110 and SHRR 40-04(2). If the charge alleges a continuing unfair practice (see SHRR 40-015(2)a.), the charge will be timely filed if it is filed within one hundred and eighty (180) days of any occurrence of the alleged unfair practice. For example, a woman alleges she was paid less for doing the same work than a man employed by the same employer. This pay difference occurred from January 15, 1982, through December 31, 1982. She may file a timely charge as early as January 15, 1982 and as late as June 29, 1983 because the alleged practice is a continuing unfair practice. However, if a woman alleges she was discharged on January 15, 1982 because of her sex, the discharge is one specific act and is not a continuing unfair practice. She may file on January 15, 1982 but may not file later than July 14, 1982.

SHRR 40-125. AMENDMENT OF CHARGE

- (1) General Rule. A charging party may amend the charge at any time prior to the issuance of findings of fact and a determination so long as the Director has adequate time to investigate additional allegations and the parties will have adequate time to present evidence. See S.M.C. 14.04.100 and 14.08.120.
- (2) Amendments which relate back to original charge.
 - a. For jurisdictional purposes the following amendments shall relate back to the date the original charge was filed:
 - (i) amendments to cure technical defects or omissions;
 - (ii) amendments to clarify and amplify allegations;
 - (iii) amendments to add allegations related to or arising out of the subject matter set forth, or attempted to be set forth in the original charge.
 - b. Amendments permitted under (2)(a)(ii) include but are not limited to amendments that change the protected class basis of the original charge. For example, a man who files a charge alleging he was denied a promotion because of his race may amend the charge to allege he was denied the promotion because of his age.

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- (3) Amendments For Subsequent Actions. Amendments to add allegations of additional unrelated discriminatory acts and/or acts of retaliation which arose after the filing of the original charge may be made if:
- a. the amendment is permissible under SHRR 40-125(1); and
 - b. the amendment is filed within 6 months after the occurrence of the acts alleged.
- (4) Amendments Changing Respondents.
- a. An amendment adding or changing a respondent relates back to the date the original charge was filed if the amendment is permissible under 14.04.100 or 14.08.120 and under SHRR 40-125(1) and (2) and if,
 - (i) within six months of the alleged discriminatory occurrence, the party to be brought in by amendment has received such notice of the charge that he or she will not be substantially prejudiced in maintaining his or her defense on the merits; and
 - (ii) knew or should have known that but for a mistake concerning the identity of the proper party, the charge would have been brought against him or her.
 - b. Nothing in this rule should be construed to require the amendment of a charge which names and is served upon the proper respondent but which incorrectly states the respondent's name. The findings of fact may correct the name of such respondent. For example, a respondent identified in a charge as XYZ Products may be correctly identified as XYZ Products, Inc. in the findings of fact.
- (5) Drafting Amended Charges. The Department may draft amended charges. The charging party shall sign the amended charge and his or her signature shall be notarized. The amended charge shall be served on the respondent in the manner prescribed by S.M.C. 14.04.110 or 14.08.130 within twenty days after the charging party signs the amended charge.

SHRR 40-130. WITHDRAWAL OF CHARGE

- (1) A charging party may request that his or her charge be withdrawn at any time before determination regarding reasonable cause is made by the Director by giving the Department written notice of his or her request. However, to withdraw a charge which has been jointly filed with EEOC or HUD, the charging party must complete and sign a Request for Withdrawal form authorized by EEOC or HUD for this purpose. This form is available at the Department's office. A charging party may use this form to withdraw the charge from both the city and federal agencies. The charging party may withdraw a charge from either agency while leaving the other charge in force.

- (2) Upon receipt of the appropriate withdrawal notice, the Director or his or her designee may make inquiries to ascertain whether the charging party gave the notice voluntarily and with an understanding of the consequences. Unless the Director or designee determines that the withdrawal request is coerced or uninformed, the Department may terminate its action on the charge and notify the charging party and respondent that the charge has been withdrawn.
- (3) A charging party who withdraws a charge may not file another charge which alleges the same facts and violation as the withdrawn charge.

SHRR 40-135. CONSOLIDATION OF INVESTIGATION AND OF CONCILIATION OF CHARGES

The Director, upon his or her own motion or upon the motion of a party, may order charges involving a common question of law or fact, or involving a common party or parties, to be consolidated for investigation, conciliation or hearing on any or all of the matters at issue in the charges.

SHRR 40-140. EXCLUSIONS — DEFENSE TO CHARGE

Whenever S.M.C. 14.04.050E or S.M.C. 14.08.190(i) is raised as a defense by a Respondent, the Department shall consult RCW 9.66A.020, WAC 162-16-050 and -060 and other similar applicable law. In doing so the Department may consider interpretations thereof as has been made by a charged agency(ies) and the court(s).

SHRR 40-150 — 40-200 (Reserved)

Investigations and Predetermination Settlements

SHRR 40-205. DIRECTOR'S INVESTIGATIONS

- (1) Pursuant to S.M.C. 3.22.010 and 3.22.020 B, the Director may, on his or her own motion or on the motion of any person, initiate investigations to determine the extent to which any potential respondent is complying with the Fair Employment Practices Ordinance or the Open Housing and Public Accommodations Ordinance.
- (2) An investigation may be initiated by the Director before or after a charge has been filed.
- (3) All investigatory and discovery procedures available to the Department in the investigation of charges may, in the discretion of the Director, be utilized in investigations initiated by the Director.

SHRR 40-210. PRE-DETERMINATION SETTLEMENTS

- (1) The charging party and the respondent are encouraged to resolve the charge by agreement at any time before a determination regarding reasonable cause is made. The Director or his or her designee will notify the parties of this option in the notice of the filing of the charge and during its initial contacts with the parties. The Director or his or her designee will mediate between the charging party and the respondent to aid such a settlement. Either party may request that the Director personally assist such mediation. The Director or his or her designee will not, however, permit pre-determination settlement (PDS) negotiations in which it is involved to become so lengthy that they defeat the purposes of the Fair Employment Practices Ordinance or the Open Housing and Public Accommodations Ordinance.
- (2) If, before a determination regarding reasonable cause is made, the charging party and respondent agree upon a settlement and the Director or his or her designee believes the remedy afforded the charging party is appropriate (see SHRR 40-055), the Department will draft a PDS agreement. the agreement will include, but need not be limited to, the following provisions:
 - a. a "no fault" settlement has been reached;
 - b. the charging party and the respondent accept the terms of the agreement as a resolution of the charge;
 - c. the specific action(s) the charging party and respondent will take to effectuate settlement of the charge and the time within which the action(s) will be taken;
 - d. the Department may investigate any alleged breach of the agreement;
 - e. if litigation is initiated to enforce the agreement, the City shall be awarded its reasonable attorney's fees and costs incurred in bringing the action.
- (3) The charging party and the respondent will sign the PDS agreement. The agreement will be incorporated in an Order of the Director which will state that the parties shall comply with the terms of the PDS agreement.
- (4) The Director will require proof of compliance with the terms of the PDS agreement. When such proof is provided the Director, he or she will administratively close the case and so notify the parties.
- (5) An order incorporating a PDS agreement will have the force and effect of an order incorporating a conciliation agreement. A PDS agreement may be enforced in the same manner as a conciliation agreement. See SHRR 40-365.
- (6) In those instances in which a person claiming to be aggrieved or a member of the class claimed to be aggrieved by the practices alleged in a charge is not a

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party to a PDS agreement, the agreement shall not in any way prejudice the rights of such person to proceed in any forum against the respondent.

- (7) The charging party will sign a release in which he or she agrees not to sue the respondent for matters which were alleged in the charge or could have been alleged in the charge.
- (8) The Director may dismiss the charge of a charging party who refuses a predetermination settlement offer that would provide the charging party all relief to which he or she would be entitled pursuant to S.M.C. 14.04.140A, 14.04.150B, or 14.08.160A and pursuant to SHRR 40-055(2) and 40-320 — 40-335 if a determination of reasonable cause were made in his or her case. See SHRR 40-305(1)d.

SHRR 40-215. WHO WILL INVESTIGATE

Charges will be investigated by the Director or by his or her designee. The Director or his or her designee may assign and reassign cases for investigation to particular staff persons or other designee. During an investigation, the Director or his or her designee may utilize information gathered by federal, state, or local agencies which are charge with the administration of fair employment practices or fair housing laws.

SHRR 40-220. PRELIMINARY EVALUATION OF CHARGE

If the allegations of a charge, if true, would not establish the basis for a reasonable cause determination, a determination of no reasonable cause may be made without further investigation.

SHRR 40-225. SCOPE OF INVESTIGATION

- (1) The purpose of the investigation of charges is stated in the Fair Employment Practices Ordinance and the Open Housing and Public Accommodations Ordinance. See S.M.C. 14.04.110 B and 14.08.130 B. In investigating a charge, the Director or his or her designee may require a person to submit, among other types of information, information which will allow the Director:
 - a. to compare the treatment of other persons with that of the charging party;
 - b. to attempt to determine if others of charging party's class have been treated the way the charging party alleges he or she was treated; and
 - c. to attempt to determine if certain policies or activities have adversely impacted charging party's class.
- (2) In connection with the investigation of any charge alleging a violation of the Fair Employment Practices Ordinance, the Director may require submission of information concerning:

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- a. the race, color, age, sex, marital status, sexual orientation, political ideology, creed, religion, ancestry, national origin and the presence of any sensory, mental or physical handicaps of employees;
 - b. the personnel records, time cards and payroll records of employees;
 - c. the procedures for advertising or notifying the public of the availability of jobs;
 - d. the procedures for hiring or selecting employees;
 - e. testing, seniority, promotion and discharge procedures; and
 - f. such other information as may be reasonably necessary to carry out the purposes of the Fair Employment Practices Ordinance.
- (3) In connection with the investigation of any charge alleging a violation of the Open Housing and Public Accommodations Ordinance, the Director may require submission of information concerning:
- a. the race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status, political ideology, possession or use of a Section 8 rent certificate, or the presence of any sensory, mental or physical handicap of any occupant, or the use of a trained guide or service dog by any handicapped person;
 - b. the terms and conditions on which the sale or lease of real property is to be made to the general public;
 - c. the vacancy rate of real property subject to be rented;
 - d. the plans for advertising or notifying the public of the availability of real property for rental or for sale; and
 - e. such other information as may be reasonably necessary to carry out the purposes of the Open Housing and Public Accommodations Ordinance.
- (4) Nothing in this rule should be construed to authorize any person to inquire of any other person regarding the latter's race, color, age, sex, marital status, sexual orientation, political ideology, creed, religion, ancestry, national origin, parental status or sensory, mental or physical handicap except when specifically directed to make such an inquiry by the Director or his or her designee.

SHRR 40-230. ORAL INTERVIEWS

- (1) The Director or his or her designee may interview the charging party, the respondent or any person who may provide information concerning the allegations of a charge.
- (2) Except at the request of the person interviewed, the charging party, the charging party's agent, the respondent and the respondent's agent will not be present during interviews of potential witnesses.

- (3) The Director or his or her designee may tape-record statements of persons only with the person's consent. A person may, at his or her own expense, make a copy of his or her own recorded statement.
- (4) Upon request, the Director or his or her designee will provide the charging party, the respondent or any other person interviewed with a copy of any existing written transcript or summary of the interviewed person's own statement. The Director or his or her designee may request the person interviewed to confirm by his or her signature that the written transcript or summary is an accurate representation of his or her statement. The person interviewed may submit additional comments regarding his or her testimony to the Department, but may not erase or otherwise alter the original statement.

**SHRR 40-235. REQUESTS FOR PRODUCTION, INTERROGATORIES,
REQUESTS FOR ACCESS AND SUBPOENAS**

- (1) The Director or his or her designee may request a respondent to provide documents, records, files or other sources of evidence to the Department. The respondent shall provide such documents, records, files or other material to the Department within twenty (20) days of the receipt of the Director's or designee's request.
- (2) The Director or his or her designee may issue interrogatories to a respondent. The respondent shall provide complete answers to the interrogatories to the Department within twenty (20) days after receiving the interrogatories.
- (3) If the respondent is unable within twenty (20) days to provide the material requested or to completely answer the interrogatories asked by the Director or his or her designee, the respondent shall notify the Director or his or her designee within five (5) days of the date of the request or interrogatories. The notification shall be written and shall state the specific time, not to exceed ten (10) days beyond the original due date, when the material will be provided or the interrogatories will be answered. The Director may grant a further extension for good cause.
- (4) The Director or his or her designee may request a respondent to allow him or her to have access to the respondent's business premises, to relevant evidence and to sources of evidence. With the respondent's consent, the Director or designee, while on the respondent's business premises, may examine, record, and copy materials, and may take the statements of employees who may provide evidence relevant to the allegations of the charge being investigated.
- (5) The Director may issue subpoenas as provided in S.M.C. 14.04.110 C, 14.08.130 C and 3.22.050. Subpoenas shall be issued by the Director at least five (5) days before the date specified in the subpoena for the production of documents or for the attendance and testimony of a witness.

- (6) If, in the Director's judgment, the circumstances of a particular case require accelerated response to the Department's discovery requests, the Director may by order shorten the time in which a person must respond to a request for production, to interrogatories, to a request for access or to a subpoena.
- (7) The Director or his or her designee will make all reasonable efforts to obtain voluntary compliance with requests for production, interrogatories, requests for access to respondent's premises, to relevant evidence and to sources of evidence and subpoenas. If a person does not voluntarily comply, the Director may order the person to provide the requested material, to completely answer interrogatories, to allow access to respondent's business premises, to relevant evidence and to sources of evidence or to comply with the subpoena within three (3) days. The Director's order may be enforced pursuant to the provisions of the Fair Employment Practices Ordinance, the Open Housing and Public Accommodations Ordinance and the ordinance creating the Seattle Office for Civil Rights. See S.M.C. 14.04.110 C, 14.08.130 C, 14.08.200, and 3.22.050 C. Additionally, an order issued pursuant to this subsection to a respondent which is a city department may be transmitted to the Mayor who shall take appropriate action to secure compliance with the order.

SHRR 40-240. FACT FINDING AND SETTLEMENT CONFERENCES

- (1) At such times as are deemed appropriate, the Director or his or her designee may hold fact finding and settlement conferences. Such conferences are part of the investigation of a charge. The charging party and respondent shall attend the conference. The purpose of the conference will be:
 - a. to identify the undisputed elements of the charge;
 - b. to define and, if possible, to resolve the disputed elements of the charge; and
 - c. to attempt to settle the charge.
- (2) The Director or his or her designee will schedule any fact finding and settlement conference to be held. The charging party and respondent will be notified at least fifteen (15) days in advance of such a conference. Notification of a fact finding and settlement conference may include a request to the charging party or to the respondent to provide information and documents for use at the conference. If the charging party or respondent do not intend to provide such information or documents, the party must so notify the Director or designee making the request within three (3) days after receiving the notice and request.
- (3) The Director or his or her designee may reschedule a fact finding and settlement conference on his or her own initiative or at the request of a party. If a party fails to attend a conference, the conference may be rescheduled or other investigation may be conducted by the Director or his or her designee. If a charging party fails to attend a conference, the charge may be dismissed if the

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Director or his or her designee determines that such failure to attend is the result of charging party's failure to cooperate. See SHRR 40-305(1)b.

- (4) Participants at fact finding conferences may be accompanied by counsel, but counsel's role is advisory only. The Director or his or her designee will conduct the conference. Counsel will not be allowed to question or cross-examine parties or other witnesses.
- (5) Respondent's representatives at a fact finding conference shall include:
 - a. a person with knowledge of the facts pertaining to the charge, and
 - b. a person with authority to negotiate a settlement.
- (6) The Director or his or her designee conducting the conference will:
 - a. explain the purpose of and the procedure for the conference, and
 - b. ask the charging party to confirm the allegations in the charge and ask the respondent to respond to the allegations if the respondent has not previously done so.
- (7) The Director or his or her designee conducting the conference may:
 - a. question the participants at the conference;
 - b. request the participants to provide statements or documents;
 - c. terminate discussion on a particular point or terminate the conference when the Director or his or her designee deems appropriate;
 - d. meet with the charging party or respondent individually concerning possible settlement and communicate all demands and offers to the appropriate person; and
 - e. ask the charging party what remedy he or she will accept to settle the charge subject to SHRR 40-055 (2).
- (8) During the conference, the charging party and respondent may make additional statements or provide additional documents.
- (9) If the charging party and respondent agree to an appropriate settlement, the Director or his or her designee will draft a predetermination settlement (PDS) agreement as provided in SHRR 40-210.
- (10) The Director or his or her designee may tape-record conferences with the permission of all participants. A participant may tape-record a conference only with the permission of all other participants at the conference. No tape-recording shall be made of any settlement discussions that may occur at a conference.

SHRR 40- 245 — 40-300 [Reserved]

Termination of Cases

SHRR 40- 305. DISMISSAL OF A CHARGE WITHOUT FINDINGS OF FACT

- (1) The Director may dismiss a charge without making findings of fact and a determination whether there is reasonable cause to believe an unfair practice has occurred when he or she determines dismissal is appropriate, including, but not limited to, cases where:
 - a. the Director or his or her designee determines that all portions of the charge were not timely filed or that the Department does not otherwise have jurisdiction;
 - b. the charging party fails to provide necessary information requested by the Director or his or her designee, fails or refuses to appear or to be available for interviews or conferences as necessary, or otherwise refuses to cooperate with the Director or his or her designee to the extent he or she is unable to resolve the charge, and the charging party has had thirty (30) days notice of the Director's intent to dismiss the charge for failure of the charging party to cooperate;
 - c. the charging party cannot be located by the Director or by his or her designee, he or she has made reasonable efforts to locate the charging party, and has sent notice to the charging party at his or her last known address of the Director's intent to dismiss the charge, and at least thirty (30) days have elapsed since the notice of the Director's intent to dismiss the charge was sent; or
 - d. the charging party has refused to accept a respondent's written settlement offer which is specific in its terms and which the Director determines would provide the charging party all relief to which he or she would be entitled pursuant to S.M.C. 14.04.140A, 14.04.150B or 14.08.160A and pursuant to SHRR 40-055(2) and 40-320—40-335 if a determination of reasonable cause were made in his or her case and the charging party has been given thirty (30) days notice of the Director's intent to dismiss the charge for refusal of the charging party to accept the offer.
- (2) In those cases where a complaint or charge has been filed with the WSHRC, the EEOC or HUD, the state or federal agency may decide if the state or federal charge or complaint should be dismissed.
- (3) The charging party will be notified by the Director or his or her designee that a charge has been dismissed.

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SHRR 40- 310. ADMINISTRATIVE CLOSURE OF CASES

- (1) The Director may administratively close a case when he or she determines it is appropriate, including, but not limited to, cases where:
 - a. a discrimination action has been filed and is being actively litigated in a court which seeks relief on the same facts as are alleged in the charge;
 - b. a PDS agreement has been reached pursuant to SHRR 40-210 and the Department has received proof of compliance with the terms of the agreement;
 - c. the charging party has refused to accept a respondent's written conciliation offer which is specific in its terms and which the Director determines would provide the charging party all relief to which he or she would be entitled pursuant to S.M.C. 14.04.140A, 14.04.150B or 14.08.160A and pursuant to SHRR 40-055(2) and 40-320—40-335 if a determination of reasonable case were made in his or her case, the charging party's assent to the agreement is a necessary term of the agreement and the charging party has been given thirty (30) days notice of the Department's intent to close the case for refusal of the charging party to accept the offer.
- (2) An administrative closure of a case terminates the action of the Director and the Department on the charge. A charging party may not file another charge that alleges the same facts and violation as the charge in a case which has been administratively closed.
- (3) The charging party and respondent will be given notice by the Department that a case has been administratively closed.

SHRR 40-315. FINDINGS OF FACT AND DETERMINATIONS OF REASONABLE CAUSE OR NO REASONABLE CAUSE

- (1) Cases in Which Findings and Determinations are Required. In all cases where the charge has not been withdrawn or the case has not been administratively closed, the Director will make findings of fact and a determination whether there is or is not reasonable cause to believe an unfair practice has been committed or is being committed (referred to in this rule as a "determination").
- (2) Reasonable Cause Standard. In those instances in which a determination is made, a determination that there is reasonable cause to believe an unfair practice has been committed or is being committed will be made when, in the judgment of the Director, a preponderance of the credible evidence establishes that an unfair practice has been committed or is being committed.
- (3) Procedure.
 - a. In all cases except employment cases in which a city department is the respondent, findings of fact and a determination will be made by the Director.

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The findings and determination will be served on the respondent and on the charging party within five (5) days after they are signed by the Director.

- b. In employment cases in which a city department is a respondent:
 - (i) the Director shall cause proposed findings of fact and a proposed determination to be served upon the charging party and upon the respondent;
 - (ii) the charging party or respondent may file with the Department any comments he or she may have regarding the proposed findings and proposed determination within twenty (20) days from receipt of said proposed findings and determination;
 - (iii) the Director will consider any timely filed comments of the parties and may direct further investigation of the case, issue new proposed findings and a new proposed determination or issue final findings and a final determination.

SHRR 40-320. MONETARY AWARD GUIDELINES, GENERAL PROVISIONS

- (1) The purpose of these guidelines is to provide a basis for the computation of monetary awards in discrimination cases arising under the Fair Employment Practices Ordinance, as amended, and under the Open Housing and Public Accommodations Ordinance, as amended. These guidelines are not mandatory and may be deviated from by the parties, by the Director or his or her designee or by the Commission.
- (2) These guidelines do not apply to any non-monetary relief, nor to they apply to monetary relief not inuring directly to the benefit of the awardee, such as employer contributions to fringe benefit funds.
- (3) Where possible, awards in compensation for tangible loss shall be supported by the following:
 - a. vouchers, receipted bills, rental agreements, or estimates;
 - b. a written statement by the awardee setting forth the nature and amount of the loss incurred, and facts showing that the loss was incurred as a result of unlawful discriminatory acts or practices of the respondent;
 - c. when back pay awards are involved, the awardee's statement shall also include a description of attempts to secure alternate employment and either (i) a statement that no interim earnings were received, or (ii) a statement showing by whom the awardee was employed and earnings received during the interim period.

- (4) The purpose of monetary awards is to bring an end to unlawful discriminatory acts and practices, to insure that such acts and practices do not recur, to restore those who have been aggrieved by such acts and practices to their rightful economic status absent the effects of unlawful discrimination, and to compensate such persons for non-economic damage arising out of the unlawful acts or practices.

SHRR 40-325. BACK PAY AWARDS

- (1) Back Pay. Once it has been determined that an awardee has sustained economic loss from a discriminatory employment practice, back pay should be awarded. Neither the good faith of the respondent nor the fact that the award is not necessary to ensure future compliance with the Fair Employment Practices Ordinance by the respondent are factors which affect a back pay award. The issue in determining whether a back pay award is appropriate is whether the awardee was economically injured and requires back pay to be made whole.
- (2) Computation. Back pay awards shall be computed to include all earnings and benefits which would be due the awardee but for respondent's unlawful acts or practices. The award shall be equal to the difference between what the awardee would have earned from Respondent and any interim earnings actually earned during the computation period plus uncompensated lost benefits less legal deductions due as a result of the award.
 - a. What the awardee would have earned from the respondent shall include the base pay, and any overtime or bonuses that would have been payable during the compensation period. The rate of pay and hours worked prior to the unlawful practice, or the same for similarly situated employees or replacement employees, should be used to compute the earnings on either an hourly, weekly or monthly basis, as is convenient.
 - b. Interim earnings shall include all amounts actually earned by the awardee during the interim period, including overtime pay, bonuses, and part-time employment earnings during the interim period which could not have been earned simultaneously with the desired full-time position. Unemployment compensation and welfare benefits shall not be considered interim earnings.
 - c. Uncompensated benefits shall include any and all benefits that are not otherwise included in sub-section (a) that would have accrued to the awardee or upon the awardee's behalf and all expenses actually incurred by the awardee in order to replace benefits that were lost as a result of respondent's unlawful actions.
 - (i) Benefits which would have accrued to the awardee or upon an awardee's behalf include, but are not limited to, employer contributions to retirement and/or profit sharing funds. Where appropriate, contributions may be

made to the funds on the awardee's behalf in lieu of a direct payment to the awardee.

- (ii) Expenses actually incurred to replace lost benefits include, but are not limited to the purchase of insurance or costs incurred by the awardee which would have been compensated by the respondent or by insurance paid for by the respondent.
- d. Legal deductions due as a result of the award include mandatory contributions, such as FICA, that are actually required by law to be withheld from wages. The amount deducted under this section shall be paid to the appropriate fund on the awardee's behalf.
- e. The compensation period for the calculation of back pay shall commence at the time the unlawful act or practice occurred and shall continue until the date a conciliation agreement is entered pursuant to S.M.C. 14.04.140 or a determination of an appropriate remedy is issued pursuant to S.M.C. 14.04.150. Whenever reinstatement is part of the agreement or remedy, the compensation period shall be computed so as to include consideration of actual reinstatement. Calculations shall be done on a calendar-quarter basis during the computation period. The compensation period shall not include any calendar-quarter period where the awardee's interim earnings, from employment with either the respondent or with another employer, equal or exceed earnings which would have been received from the respondent but for the respondent's unlawful act or practice. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter.

(3) Special Circumstances Affecting Back Pay Award.

- a. For back pay to be awarded, the awardee must show that she or he was ready, willing, and able to take work during the interim period and that she or he exercised reasonable diligence toward securing other employment. For this purpose the written statement executed by the awardee pursuant to SHRR 40-320 should provide sufficient evidence to sustain the award of back pay. If the awardee did not use reasonable diligence in securing alternate employment during any part of the compensation period, then the compensation period will be decreased by that amount of time in making the computation described in paragraph (2) above.
- b. Offers to reinstate the awardee will only affect the awardee's right to back pay when such offers would wholly rectify the effects upon the awardee of respondent's past discriminatory acts or practices. The offer to reinstate must include: reinstatement in a position equal to that which the awardee held before the unlawful acts or practices, complete back pay, restoration of seniority and reimbursement of the expenses which the awardee incurred as

a result of the unlawful acts or practices, and assurances that the respondent will maintain a non-discriminatory working environment.

**SHRR 40-330. AWARDS IN COMPENSATION OF INCIDENTAL AND
CONSEQUENTIAL EXPENDITURES AND LOSSES**

- (1) Travel and Time. Traveling expenses shall be awarded to the extent actually incurred by the awardee because of respondent's unlawful act or practice. These expenses shall also include those incurred as a result of additional commuting between home and job caused either by a relocation of work or housing. Personal time lost by an awardee as a result of respondent's unlawful acts or practices shall be compensated at the rate of awardee's normal hourly pay, or if none such exists, at the rate of \$5.00 per hour. Travel and time expenses may be compensated to the extent they are reasonably ascertainable and unavoidable.
- (2) Employment Agency Fees. All employment agency fees paid by an awardee to secure a job from which she or he is unlawfully discharged or laid off, and those which are contracted for or paid by an awardee to secure later employment because of such termination, shall be compensable.
- (3) Housing-Sales. If an awardee has been unlawfully prohibited by a respondent from making an offer to purchase housing, or if the awardee's offer is unlawfully rejected and an equal or lower offer is accepted by respondent from another, then an award equal to the difference between the asking price of the housing at the time the awardee's offer was rejected and the final selling price shall be made. If an awardee finds it necessary to pay an inflated price to secure other housing as a result of unlawful discrimination, an award equal to the excess amount paid over market price shall be made.
- (4) Housing-Rental. If, to satisfy her or his immediate housing needs, an awardee is unlawfully required to pay rent in excess of that at which respondent's housing was offered, an amount equal to the total increased rental costs which the awardee has paid or has committed herself or himself to pay, or the increased amount for one year, whichever amount is greater, shall be made.
- (5) Real Estate and Rental Agency Fees. All real estate and rental agency fees and advertising costs paid by an awardee to secure housing accommodations from which she or he is later unlawfully evicted or caused to move, and those which are contracted for or paid by an awardee to secure later housing accommodations because of such unlawful removal, shall be compensable.
- (6) Housing Deposits. If an awardee is unlawfully removed by respondent from any housing accommodation, and in order to secure new accommodations is required to pay a damage or other deposit, then an award shall be made equal to 1% per month on refundable deposits. The award should be computed for the

period of awardee's actual or expected rental terms, or for one year, whichever is longer. On nonrefundable deposits, an amount equal to the amount by which the deposit exceeds the deposit made on the housing accommodations from which the awardee was unlawfully removed shall be made.

- (7) Miscellaneous Expenses. All other expenses or losses incurred as a result of respondent's unlawful acts or practices shall be compensable by monetary award.
- (8) Interest. Simple interest at the rate of 12% per annum shall be added to all back pay awards and to all awards which are in compensation of out-of-pocket expenses incurred by the awardee. Such interest shall run from the date such back pay was due the awardee as wages or from the date the expenses were paid out by the awardee.
- (9) Employment Discrimination--Computation. All calculations under subsections 1, 2, 7, and 8 above, for an employment discrimination case, shall be computed with reference to the period over which the awardee is determined to have been damaged by the respondent's wrongful act.
- (10) Attorney's Fees.
 - a. The Director may require the payment of a charging party's reasonable attorney's fees as a condition of settlement of any determination that reasonable cause exists to believe that an unfair practice has occurred or pursuant to SHRR 40-210. The Director shall determine what is a reasonable attorney's fee by determining the number of hours reasonably expended multiplied by a reasonable hourly rate.
 - b. Any person requesting payment for reasonable attorney's fees shall submit to the Department an affidavit and supporting documentation, including contemporaneously kept time records, which shows the number of hours worked, the work performed, the individual who performed the work and a reasonable hourly rate for each individual. Copies shall be provided to the respondent or respondent's representative. The respondent may submit contravening evidence upon the reasonableness of the hours expended or the requested hourly rate.
 - c. In determining the reasonableness of the award the Director may consider the following:
 - (i) the prevailing market rates in the relevant community;
 - (ii) the training, background, experience and skill of the individual attorney;
 - (iii) the complexity of the issue;
 - (iv) whether any of the work or hours appear excessive, redundant or otherwise unnecessary; or

- (v) any other factor which the courts of the United States or the State of Washington may from time to time consider to be relevant.
- d. No award shall be made under this section if a party represented themselves pro se or if a party's attorney failed to file a notice of appearance with the Department. No fee shall be recoverable for services rendered in connection with the representation of the party in another forum or prior to the date of filing a notice of appearance with the Department.
- e. The Director's determination regarding an award of reasonable attorney's fees shall be in writing, shall include the basis for the determination and shall be incorporated into a written order.

SHRR 40-335. AWARDS IN COMPENSATION OF INTANGIBLE LOSSES

- (1) Mental and physical anguish, pain and suffering should be compensable by monetary award to the extent they resulted from the unlawful acts or practices of the respondent. The undergoing of required medical, mental or psychiatric treatment shall constitute evidence of physical or mental anguish, pain and suffering. As well, any sworn statement of a charging party or other witness, that has been reduced to writing, in support of a charging party's contention of his/her suffering or distress shall constitute evidence of physical or mental anguish, pain and suffering.
- (2) Embarrassment, humiliation and indignity are the natural and unavoidable consequences of any unlawful discriminatory act or practice and should be compensated in an amount not less than \$250 to any affected awardee without further proof of injury or loss. An award for embarrassment, humiliation and indignity should be made in larger amounts, depending upon severity of harm suffered, when it appears that the humiliation, embarrassment or indignity suffered by the awardee was substantial or aggravated. Examples of facts showing such substance or aggravation are as follows:
 - a. Untrue, derogatory statements of the respondent regarding the awardee were made known to the awardee;
 - b. The awardee was demoted;
 - c. Slurs or epithets were used by respondent in references to any class of persons protected by Seattle Human Rights laws;
 - d. The incident occurred publicly or was within the knowledge of the awardee's peers;
 - e. Respondent's unlawful acts were willful; repetitive or reckless, constituting harassment; or

- f. Respondent knew or should have known that his or her actions violated the awardee's rights and the awardee knew that she or he was the victim of an unlawful discriminatory act or practice.
- (3) In charges involving unfair real estate practices, the charging party may be awarded an amount representing actual damages under this section. In all other charges, awards under this section shall not exceed Ten Thousand Dollars (\$10,000.00).

SHRR 40-340. CONCILIATION EFFORTS ARE REQUIRED

- (1) Post-determination conciliation efforts are mandated by the Fair Employment Practices Ordinance and by the Open Housing and Public Accommodations Ordinance in all cases in which a reasonable cause determination has been made except in employment cases in which a city department is the respondent. See S.M.C. 14.04.140 and 14.08.140.
- (2) In employment cases in which a city department is the respondent and in which a reasonable cause determination has been made, the Director is required by the Fair Employment Practices Ordinance to confer with the parties and determine an appropriate remedy as part of the process of determining an appropriate order. See S.M.C. 14.04.050 B. The Director shall attempt to eliminate unfair practices determined to have been committed in city employment cases by conference, conciliation and persuasion during the communication with the parties mandated by S.M.C. 14.04.150 B.

SHRR 40-345. EXTENT OF CONCILIATION EFFORTS

In conciliating a case in which a determination of reasonable cause has been made, the Director shall attempt to achieve a just resolution of all unfair practices found to have been committed by obtaining an agreement with the respondent that it will eliminate the unfair practices and that it will provide appropriate affirmative relief. If the respondent has been afforded a reasonable opportunity to negotiate an agreement, the conciliation efforts may be determined to have been unsuccessful. If, for example, in the judgment of the Director, it is apparent from an exchange of letters that agreement cannot be reached, it is not necessary to hold a conference. The Director will not allow conciliation efforts to be so lengthy as to defeat the purposes of the Fair Employment Practices Ordinance or of the Open Housing and Public Accommodations Ordinance.

SHRR 40-350. CHARGING PARTY'S CONSENT NOT REQUIRED FOR CONCILIATION AGREEMENT

The Director will not delay the execution of an agreement with a respondent solely because a charging party contends such an agreement does not provide full relief.

What constitutes full relief is within the discretion of the Director. A charging party's consent is not required for the Director to enter into a conciliation agreement with a respondent if the Director determines the agreement provides the charging party all relief to which he or she would be entitled pursuant to S.M.C. 14.04.140A, 14.04.150A or 14.08.160A and pursuant to SHRR 40-055(2) and SHRR 40-320—40-335.

SHRR 40-355. SUCCESSFUL CONCILIATION

- (1) Conciliation agreements reached in all cases except employment cases in which a city department is the respondent shall be written, signed and incorporated in an order as provided in the Fair Employment Practices Ordinance and in the Open Housing and Public Accommodations Ordinance. See S.M.C. 14.04.140 and 14.08.160.
- (2) Conciliation agreements reached in employment cases in which a city department is the respondent shall be incorporated in an Agreed Order issued by the Director and shall be signed by the head of the respondent city department. The Agreed Order shall thereafter be treated as any other final order issued by the Director pursuant to S.M.C. 14.04.150 B except that the respondent may not appeal the Agreed Order.
- (3) Conciliation agreements will include a provision stating that if litigation is initiated to enforce the agreement, the City shall be awarded its reasonable attorney's fees and costs incurred in bringing the action.
- (4) The Director shall cause a copy of any signed conciliation agreement and order or Agreed Order incorporating such an agreement to be served upon the respondent and upon the charging party.

SHRR 40-360. UNSUCCESSFUL CONCILIATION

- (1) In all cases except employment cases in which a city department is the respondent, if conciliation efforts are unsuccessful, a written finding of the failure of conciliation shall be issued by the Director or his or her designee pursuant to S.M.C. 14.04.140 B or 14.08.160 B.
- (2) In employment cases in which a city department is the respondent, if conciliation efforts are unsuccessful, the Director will notify the parties of the failure of conciliation and will thereafter proceed to issue the order required by S.M.C. 14.04.150 B.

SHRR 40-365. ENFORCEMENT OF CONCILIATION AGREEMENTS

- (1) In all cases except those in which a city department is a respondent, if a respondent fails or refuses to comply with the terms of a conciliation agreement

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incorporated in an order of the Director, within twenty (20) days after the Director determines the agreement has been breached the Director shall cause the record of the proceedings to be delivered to the City Attorney. The City Attorney may invoke the aid of the appropriate court to secure enforcement of the agreement and the imposition of penalties. See S.M.C. 14.04.060, 14.04.210, 14.08.187 B, and 14.08.200.

- (2) In cases in which a city department is the respondent, if the respondent fails or refuses to comply with the terms of a conciliation agreement incorporated in an order of the Director, within twenty (20) days after the Director determines the agreement has been breached, a copy of the order incorporating the agreement shall be transmitted to the Mayor. The Mayor shall take appropriate action to secure compliance with the order. See S.M.C. 14.04.180 D and 14.08.187 A.

SHRR 40-370. REFERRAL OF CASES TO THE CITY ATTORNEY

In all cases except cases in which a city department is the respondent, within ten (10) days of the service upon parties of the notice of unsuccessful conciliation (see SHRR 40-360), the Director shall cause the Department's case file to be forwarded to the City Attorney for appropriate action. See S.M.C. 14.04.140 B, 14.04.170, 14.08.160 C, 14.08.170.

SHRR 40-375. DIRECTOR'S ORDER IN CITY EMPLOYMENT CASES

In employment cases in which a city department is the respondent, within sixty (60) days of the date final findings and a final determination of reasonable cause are served on the parties, if conciliation efforts have not resulted in a signed Agreed Order (see SHRR 40-340 through 40-365), the Director will issue the order mandated by S.M.C. 14.04.150 B.

SHRR 40-380. WITHDRAWAL AND AMENDMENT OF FINDINGS, DETERMINATIONS AND ORDERS

Final findings of fact, determination and order may not be withdrawn or amended without the agreement of the parties except:

- (1) upon an order of the Human Rights Commission following an appeal pursuant to S.M.C. 14.04.130, 14.04.160, 14.08.150; or
- (2) upon motion from a party or upon the Director's motion to correct clerical mistakes or errors arising from oversight or omission.

SHRR 40-385. APPEALS TO HUMAN RIGHTS COMMISSION

- (1) Challenge of Dismissals and Administrative Closures. A charging party may challenge the dismissal of his or her charge (see SHRR 40-305) or the administrative closure of the case regarding his or her charge (see SHRR 40-310) by filing a written statement challenging the dismissal or closure with the Human Rights Commission within thirty (30) days of the date the notice of dismissal or notice of administrative closure was issued. See SHRR 46-040 and 46-050.
- (2) Appeal of No Cause Determination. A charging party may appeal a determination that there is not reasonable cause for believing an unfair practice has been committed within thirty (30) days of the determination as provided in S.M.C. 14.04.130 and 14.08.150 and in SHRR 46-030.
- (3) Appeals of Reasonable Cause of Determinations and Remedial Orders in Cases Involving City Department as Respondents. As provided in S.M.C. 14.04.160 A, and in SHRR 46-060, in employment cases in which a city department is the respondent, the charging party or respondent may appeal the Director's determination that there is reasonable cause to believe an unfair practice has been or is being committed and the Director's Order within thirty (30) days of the date the Director's Order is issued.

SHRR 40-390. PRESENTATION OF DOCUMENTS TO CITY COUNCIL IN CITY EMPLOYMENT CASES

In employment cases in which a city department is the respondent and the remedy ordered by the Director includes payment of more than five thousand dollars (\$5,000.00), if no timely appeal has been filed the Director will, within sixty (60) days of the date of his or her final order, cause the necessary documents to be presented to the City Council pursuant to S.M.C. 14.04.150 D and E. If a timely appeal is filed, the Director will cause the necessary documents to be presented to the City Council within (60) days of the date his or her final order is affirmed by a panel of the Commission pursuant to SHRR 46-060(6)b or when he or she is directed to do so by a panel of the Commission pursuant to SHRR 46-060(6)c.

SHRR 40-395. APPEALS TO HEARING EXAMINER IN CITY EMPLOYMENT CASES.

In an employment case in which a city department is the respondent and the remedy ordered by the Director includes payment of more than five thousand dollars (\$5,000.00), if all necessary documents have been presented to the City Council and it fails or refuses to appropriate the amount ordered by the Director within ninety (90) days of the date the documents are presented to the Council, the Director will, within ten (10) days of the expiration of the ninety day period, certify the case to the Hearing Examiner as provided by S.M.C. 14.04.150 E and by section VI of the Rules

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and Procedures Governing Employment Discrimination and Open Housing Cases
issued by the Office of the Hearing Examiner.